

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JANERIS DE JESUS RODRIGUEZ, as Parent and Natural
Guardian of E.R., and JANERIS DE JESUS RODRIGUEZ,
Individually, *et al.*,

Plaintiffs,

-against-

DAVID C. BANKS, in his official capacity as Chancellor of
the New York City Department of Education, *et al.*,

Defendants.

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**DECLARATION OF SAPNA
KAPOOR IN OPPOSITION
TO PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION**

No. 23 CV 10356

Pursuant to 28 U.S.C. § 1746, **SAPNA KAPOOR** hereby declares the following:

1. I am the Senior Policy Advisor for the Impartial Hearing Order Implementation Unit ("IHOIU") within the New York City Department of Education ("DOE").

2. I submit this Declaration in opposition to Plaintiffs' application, by way of proposed order to show cause, for an order directing the DOE Defendants to immediately fund Plaintiffs' pendency placements at the International Academy for the Brain ("iBRAIN").

3. I am familiar with the facts and circumstances set forth in this declaration based upon my personal knowledge and upon information and belief, the source of such information and the basis for such belief being, *inter alia*, conversations with employees of the DOE Defendants and my review of documents in the possession and custody of the DOE Defendants, such as those documents filed with the DOE's Impartial Hearing Office and those documents filed in connection with the administrative proceedings pending before Impartial Hearing Officers, as well as my experience handling special education matters for the DOE.

4. Each of the Student-Plaintiffs in this action has received a determination that pendency lies at iBRAIN for the 2023-2024 school year.

5. Reviewing and processing payments as required under those pendency determinations has been an ongoing and individualized process. For each student, DOE must obtain documents detailing the services the students are receiving and the amounts billed for those services, as required by the pendency orders or agreements.

6. Once Plaintiffs and their service providers have provided the necessary documents to DOE, those documents are reviewed for completeness before payments are processed and remitted to the appropriate provider as required by the pendency orders or pendency agreements.

7. The DOE has been working diligently to review and process for the more than 30 students attending iBRAIN in the 2023-2024 school year, as well as the several thousand students attending other schools who have received pendency orders, agreements or final orders entitling them to funding.

8. For E.R., in accordance with the final decision in Case No. 251092, IHOIU has of processed payment for tuition in the amount \$293,464.00 covering the period 7/5/2023 to 6/24/2024 with this amount issued to iBRAIN via EFT on 11/27/2023 and 11/29/2023 - check numbers 45902762 and 95907780. **There are currently no outstanding amounts owed for pendency tuition.**

9. E.R.'s final order in 251092 also includes a provision regarding transportation. In accordance with the final decision, IHOIU has processed payment for transportation in the amount \$192,930.00 covering the period 7/5/2023 to 6/24/2024. **There are currently no outstanding amounts owed for pendency transportation.**

10. For M.C., in accordance with the pendency order in Case No. 250887, IHOIU

has processed payment for tuition in the amount of \$68,124.00 for the period 7/5/2023 to 12/31/2023 with the \$68,124.00 issued to iBRAIN via EFT on 8/14/2023 and 9/5/2023 - check numbers 45757804 and 55786717. **There are currently no outstanding amounts owed for pendency tuition.**

11. M.C.'s pendency order in 250887 also includes a provision regarding transportation. On 10/18/2023, the IHO in 250887 issued a final order, which was appealed by Plaintiffs and cross-appealed by the DOE. In accordance with the pendency order, payment for transportation services is subject to receiving actual documentation that the student attended iBRAIN in person and/or that the student was transported to and from school from 7/5/2023 to 10/17/2023. However, BIRG has yet to provide the necessary documentation to support transportation payments. On 12/19/2023, IHOIU reached out to BIRG requesting the necessary documentation regarding transportation.

12. For S.C., in accordance with the pendency order in Case No. 250941, IHOIU has processed payment for tuition in the amount of \$151,963.98 covering the period 7/5/2023 to 12/31/2023 with this amount issued to iBRAIN via EFT on 11/27/2023 and 11/29/2023 - check numbers 45902762 and 95907780. **There are currently no outstanding amounts owed for pendency tuition.**

13. S.C.'s pendency order in 250941 also includes a provision regarding transportation. In accordance with this pendency order, payment for transportation services is subject to receiving actual documentation that the student attended iBRAIN in person and/or that the student was transported to and from school. However, BIRG has yet to provide the necessary documentation to support transportation payments. On 12/19/2023, IHOIU reached out to BIRG requesting the necessary documentation regarding transportation.

14. S.C.'s pendency order in 250941 also includes a provision regarding nursing.

In accordance with the pendency order, IHOIU has processed payment for nursing in the amount of \$144,936.00 covering the period 7/5/2023 to 12/31/2023. **There are currently no outstanding amounts owed for pendency nursing.**

15. For Y.N., the pendency order in Case No. 250846 includes a provision for tuition and transportation. However, in the complaint filed 11/27/2023, Plaintiffs allege at paragraph 139 that Parent-Plaintiff of Y.N. terminated Y.N.'s enrollment at iBRAIN as of 10/1/2023. IHOIU is unable to implement any part of the pendency order for the period that Y.N. was actually enrolled at iBRAIN in the 2023-2024 school year until such time as iBRAIN confirms directly with IHOIU that Y.N. has left iBRIAN and is no longer enrolled there. On 12/21/2023, IHOIU reached out to BIRG requesting confirmation regarding the student's enrollment at iBrain.


16. For A.C., in accordance with the pendency order in Case No. 251145, IHOIU has processed payment for tuition in the amount of \$151,963.98 covering the period 7/5/2023 to 12/31/2023 with this amount issued to iBRAIN via EFT on 10/20/2023 and 10/23/2023 - check numbers 05847376 and 35849569. **There are currently no outstanding payments for pendency tuition**

17. For A.C, in accordance with the pendency order in Case No. 251145, the "District [DOE] shall fund transportation related costs to be paid directly to the provide upon presentation of invoices for services rendered." However, BIRG has yet to provide the necessary invoices to support transportation payments. On 12/19/2023, IHOIU reached out to BIRG requesting the necessary invoices regarding transportation.

18. Since July 1, 2023 and through December 20, 2023 DOE has processed \$6,648,338.19 to iBRAIN.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 22, 2023
New York, New York



Sapna Kapoor, Esq.